SCR.A/536/2005 1/6 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 536 of 2005
with
CRIMINAL MISCELLANEOUS APPLICATION NO.7836 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AJAYKUMAR PRAVINCHANDRA THAKER - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR MRUGEN K PUROHIT for Petitioner No(s).: 1.

Mr.Gohi, Addl.PUBLIC PROSECUTOR for Respondent No(s).: 1.
MR SANDEEP N BHATT for Respondent No(s).: 2.
==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 11/08/2005

ORAL JUDGMENT

1.With the consent of learned advocates appearing for the parties matter is taken up for final hearing

today.

2.The only question arises for consideration is:

Whether the trial court was justified in putting the condition of deposit of passport while cancelling the Non-Bailable Warrant in addition to the imposition of Penalty of Rs.500/-?

3.Heard Mr.Purohit for the petitioner and Mr.Gohil, Ld.APP for the respondent-State and Mr.Buch for the original complainant.

4.As such, upon hearing the learned advocates for the parties, it appears that on factual aspect there is no dispute that a Non-Bailable Warrant has issued by the Ld.Magistrate and the petitioner applied for cancellation of said Non-Bailable Warrant. It was the case of the petitioner that he remained personally present on the last date of adjournment and the Ld.Magistrate found that he did not remain present. Be as it may, but, it appears that the Ld.Magistrate has found that it is a case for cancellation of warrant. However, the Ld.Magistrate has considered the amount of cheque for Rs.2 lacs and has found that the penalty of Rs.500/- is required to be imposed and condition for surety of Rs.5,000/- is also required to be imposed and in

addition to the same, the Ld.Magistrate has put the condition of directing the petitioner accused to remain present on every day of hearing fixed by the court and has also directed for deposit of passport. So far as the other part of the conditions of the order are concerned, the same is not under challenge except the condition for deposit of passport. It is under these circumstances, against the direction for deposit of passport the petitioner has approached this court.

5. In normal circumstances, it is the discretion of the court to impose suitable conditions considering the facts and circumstances of the case. However, such a judicial discretion deserves to be exercised properly. The exercise of such discretion should not appear to be so perverse or ex-facie harsh to either party to the proceedings. The impugned complaint is under Negotiable Instruments Act and the case is a summons triable case. It is true that the accused in normal circumstances is required to remain present on the date fixed by the court, but when the Ld.Magistrate has also found a case for cancellation of warrant by imposing the penalty of Rs.500/- and of directing to furnish surety for a sum of Rs.5,000/-. The learned Magistrate has not examined

on the aspect of the other conditions for ensuring that the petitioner accused may not be in a position to hamper the proceedings of trial in case his presence is required at the time of trial. The Ld.Magistrate could have provided for that condition upon the petitioner accused of not to leave the limits of Gujarat State without prior permission of the authorities in addition to the condition of remaining present on the date which may be fixed by the court. The Ld.Magistrate could also have directed the petitioner for furnishing undertaking to the court so that in the event there is any breach of such undertaking the court may be in a position to impose punishment for breach of undertaking in addition to other powers as are prescribed under law. Keeping in view the subject matter of the complaint and as that it is a summons triable case the discretion appears to have been ex-facie harshly exercised by the Ld.Magistrate which deserves to be interfered with by this court in exercise of powers under Article 227 of the Constitution of India.

6. The Ld.advocate for the petitioner, during the course of hearing, has also agreed to be abide by the condition not to leave the Gujarat State without

prior permission of the court and for giving undertaking to the court to remain personally present on every date of hearing and therefore I find that no further discussion is required on the said aspects leaving the matter at that stage. Suffice it to say that the said condition, considering the facts and circumstances of the case, would take care and ensure that the accused is not in a position to hamper the trial before the learned Magistrate as his presence can be secured accordingly in addition to other normal mode provided under law.

7. It appears that in any case the original complainant is not at fault and therefore considering the facts and circumstances of the case the original complainant would be entitled to the cost of Rs.2500/- towards present litigation from the petitioner herein.

8. In view of the above, the order passed by the Ld.Magistrate, dated 14.2.05 below application-Exh.11 is modified to the extent that in place of condition No.2 for deposit of passport there shall be condition that the petitioner-accused shall not leave the limits of Gujarat State without prior permission of the concerned court and in addition

thereto the petitioner shall also furnish the undertaking within a period of ten days from today to the Ld.Magistrate that he shall remain present personally on every day which may be fixed by the court and the petitioner shall also pay costs of Rs.2500/- to the original complainant-respondent No.2 herein within ten days from today.

9. Petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly.

10. In view of the order passed in main Spl.Cri.Appln.No.536/05, the Cri.Misc.Appln.No.7836/05 would not survive and it shall stand disposed of accordingly.

(JAYANT PATEL,J)

11.8.05/murty